

IN THE HIGH COURT OF JUDICATURE FOR RAJASHTAN,
JAIPUR BENCH, JAIPUR.

S.B. Criminal Appeal No. 171 / 1984

Mohan & Ors.

Versus

State of Rajasthan

Date of Judgment: 18th April, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Rajendra Yadav, for the Appellant.

Mr. J.P. Lamba, Public Prosecutor for the State.

(Per Court):

This appeal arises out of judgment dated 29.3.1984 passed by the Sessions Judge, Sikar, whereby he has convicted the appellants as under:

PARSA RAM S/O. NANU RAM-

U/s. 148 IPC - 1 Years and 6 months RI and a fine of Rs. 500/- (in default of payment of fine, further one month RI).

U/s. 326 IPC - 3 years RI and a fine of Rs.1000/- (in default of payment of fine, further 3 months RI).

BHAGU S/O. NANURAM-

U/s. 148 IPC - 1 Years and 6 months RI and a fine of Rs. 500/- (in default of payment of fine, further one month RI).

U/s. 324 IPC - 1 Years and 6 months RI and a fine of Rs.1000/- (in default of payment of fine, further 3 month RI).

U/s.326/149 IPC - 2 Years RI and a fine of Rs. 1000/- (in default of payment of fine, further 3 month RI).

U/s.323/149 IPC - 3 months RI and a fine of Rs. 100/- (in default of payment of fine, further 7 days RI).

NANURAM, MOHAN, TULSIRAM, RAM KUMAR,
RATNA, CHANDRA RAM AND CHOUTHMAL-

U/s. 147 IPC - 1 Years RI and a fine of Rs. 500/- (in default of payment of fine, further one month RI).

U/s.326/149 IPC - 2 Years RI and a fine of Rs.1000/- (in default of payment of fine, further 3 months RI).

U/s.324/149 IPC - 1 Year RI and a fine of Rs. 500/- (in default of payment of fine, further one month RI).

U/s. 323 IPC - 6 months RI and a fine of Rs. 200/- (in default of payment of fine, further 15 days RI).

MOHAN S/O. TEJARAM-

U/s. 435 IPC - 2 Years RI and a fine of Rs. 1000/- (in

default of payment of fine, further three months RI).

During the pendency of this appeal, appellant No.1 Mohan and appellant No.2 Nanu have expired. Therefore, the appeal abates qua them.

In brief, the prosecution story is that on 10.3.1982, Ghasi Ram lodged a report at Police Station Sadar, Sikar wherein he claimed that for the last 20-21 years there has been a dispute between Sheo Chanda Kumhar and Mohan Kumhar over a Guwadi (an open space where cow dung is stored). There also has been litigation between the parties over the said space. Sheo Chanda has won the litigation and the mutation has been opened in his name in the Tehsil. Today, on 10.3.1982, around 9 or 10 O'clock in the morning, Mohan, Nanu, Bhapu, Parsa, Ratna, Chothe and Jiva Kumhar started digging a foundation in the land belong to Sheo Chanda and started filling it up with stones. Sheo Chanda, Chotu, Hanuman, Gumana alongwith the Up-Sarpanch, Nanu Ram went to

the site. Nanu Ram tried to explain things to both the parties. But, Mohan and others started verbally abusing Nanu Ram and others. They burnt down the house of Hanuman and attacked the party of Sheo Chanda with Barchi (a sharp edged weapon) and Lathis (bamboo sticks). Bhabhu Ram who had a gun in his hand fired at Nanu Ram. The pellets hit Nanu Ram's stomach and hands. Parsa was carrying a Barchi. Upon hearing the hue and cry, Laxman, Bodu and others rushed to the rescue of the victims. Nanu Ram, Up-Sarpanch, and Chotu Ram who were hit by Barchies are in serious condition and have been hospitalized at the Sikar Hospital. This attack was mounted with the intention to kill the Up-Sarpanch. Since there was no family member of the victim, therefore, the complainant claimed that he had come to lodge the report at the Police Station.

On the basis of the said report a formal FIR, FIR No.23/1982 was chalked out for offences under Sections 307, 147, 148, 149, 436 IPC. The charge sheet was

submitted against Mohan, Nanu, Nathu, Parsa, Ratna, Chandra Ram, Chouthmal, Ram Kumar, Tulsi Ram. and Jeeva. Jeeva Ram S/o. Mala Kumar was declared as absconder and proceedings under Section 299 of the Criminal Procedure Code was initiated against him. The appellants were charged under different offences. In order to support its case, the prosecution examined sixteen witnesses and submitted a large number of documents. In defense, the accused persons examined two witnesses. The court also called Dr. S.P. Jain as Court Witness and recorded his testimony. After going through the oral and documentary evidence, the learned trial court convicted the appellants as aforementioned. Hence, this appeal before this court.

Mr. Rajendra Yadav, the learned counsel for the appellants, has argued that the place of occurrence belonged to the appellants and not to the complainant. It is the complainants who were the aggressors and who attacked the appellants. Therefore, in the right of private

defense, the appellants caused injuries to the complainant party. Although, the appellants have received injuries, the prosecution witnesses have not explained their injuries. According to Ex.D.14, Ram Kumar had suffered a lacerated wound on the left ankle and a lacerated wound in the left scapular region. Similarly, Nanu Ram had suffered lacerated wound in left finger. Likewise, Mohan Lal had suffered an injury on his forehead by blunt weapon. In order to protect themselves, the appellants had no option but to cause injuries to the complainant party. However, considering the injuries suffered by the complainant-party, the appellants have not exceeded their right of private defense. The learned trial court has failed to appreciate the right of private defense in right prospective.

On the other hand, Mr. Jagdish Lamba, the Public Prosecutor, has claimed that Hanuman and Shiv Chanda owned the place of occurrence. Therefore, the appellants were the aggressors who tried to dig a foundation and to

fill the same with stones. He has, thus, supported the impugned judgments.

We have heard both the learned counsels and have perused the impugned judgment and have examined the record produced before us.

A bare perusal of the evidence reveals that there were some contradictions about the ownership of the land where the occurrence had taken place. While the appellants have produced documents claiming the land to be theirs, the prosecution has also produced documents indicating that the land belongs to Hanuman and Shiv Chanda. Thus, it is unclear as to whom the land belong to.

Despite the fact that the appellants have suffered injuries by blunt weapons, the prosecution witnesses have not explained the injuries. Therefore, the prosecution witnesses are untrustworthy witnesses.

There is also a doubt in the medical report whether the injuries caused to Nanu Ram, Up-Sarpanch, were caused by fire-arm weapons or not? According to Dr. M.P. Jain, PW.2, the first and the second injuries were caused by firearm weapon. Yet, in his cross-examination, he claims that it cannot be said with certainty and the said injuries were caused by firearm weapons. Thus, Dr. Jain's testimony is self-contradictory in nature.

One of the settled principles of criminal jurisprudence is that the prosecution must prove its case beyond a reasonable doubt. The distance between "may be true" and "must be true" is a long distance that the prosecution must cover. In case it fails to do so, then the benefit of doubt has to be given to the appellants. In the present case, the prosecution has failed to cover the said distance. For, the place of occurrence, the nature of injuries and what actually transpired during the incident has not been brought up clearly.

In the result, this appeal is allowed and the impugned judgment dated 29.3.1984 is quashed and set aside. Since the appellants are already enlarged on bail, their bail bonds are discharged.

R.S. Chauhan, J.